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 And Spectrum Financial Group

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY
 Debtor.

Bankruptcy No. BK-S-06-10725-LBR

In re:

USA CAPITAL REALTY ADVISORS, LLC
 Debtor.

Bankruptcy No. BK-S-06-10726-LBR

Bankruptcy No. BK-S-06-10727-LBR

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC
 Debtor.

Bankruptcy No. BK-S-06-10728-LBR

Bankruptcy No. BK-S-06-10729-LBR

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC
 Debtor.

(Jointly Administered)
 Chapter 11

In re:

USA SECURITIES, LLC
 Debtor.

ROLAND WEDDELL and SPECTRUM FINANCIAL
 GROUP, LLC,

Plaintiffs,

Adversary No. _____

vs.

**COMPLAINT TO DETERMINE
 DISCHARGEABILITY OF DEBT**

USA COMMERCIAL MORTGAGE COMPANY,

Defendant

1 Plaintiffs Rolland P. Weddell and Spectrum Financial Group, Inc. (collectively, "Plaintiffs"),
 2 by and through its counsel, Hale Lane Peek Dennison and Howard, hereby complains against debtor
 3 USA Commercial Mortgage Company ("USA") to determine that Plaintiffs' claim against the Debtor
 4 is not dischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6), and in support thereof,
 5 respectfully state as follows:

6 PARTIES

7 1. At all relevant times, Rolland P. Weddell ("Weddell") was an individual residing in
 8 Carson City, Nevada.

9 2. At all relevant times, Spectrum Financial Group, LLC ("Spectrum") was a Delaware
 10 Limited Liability Company doing business in the State of Nevada as Spectrum Financial Group II,
 11 LLC.

12 3. At all relevant times, debtor USA Commercial Mortgage Company ("USA") was a
 13 Nevada corporation, with its principal place of business in Clark County, Nevada, doing business as
 14 USA Capital.

15 4. On or about April 13, 2006 (the "Petition Date"), Debtor commenced this case by filing
 16 a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code, Title 11 of the United States
 17 Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code").

18 JURISDICTION AND VENUE

19 5. This court has jurisdiction over this case pursuant to 28 U.S.C. § 1334(a). The subject
 20 matter of this Complaint is a "core proceeding" under 28 U.S.C. §§ 157(b)(2)(I) and 157(b)(2)(J).

21 6. The venue of this action is proper pursuant to 28 U.S.C. § 1409.

22 GENERAL ALLEGATIONS

23 7. Prior to the commencement of the above-captioned bankruptcy case, Plaintiffs filed an
 24 action against USA in the United States District Court for the District of Nevada. In addition to USA,
 25 Plaintiffs named USA's former chief executive officer, Thomas A. Hantges, its former president and
 26 treasurer, Joseph Milanowski, and its former Vice President, Richard Kropp. Also named as
 27 defendants in that lawsuit were Amblamo, LLC ("Amblamo"), a lender and beneficiary of certain
 28 loans made by USA, and Housing Partners LLC ("Housing Partners"), which is an affiliate of USA,

1 Hantges, and Milanowski.

2 8. That lawsuit, which is still ongoing, is captioned Roland P. Weddell, *et al.* v. USA
3 Commercial Mortgage, *et al.*, case number CV-S-01-0355 (the "Action"). A copy of Plaintiffs' most
4 recent pleading, the Fourth Amended Complaint, is attached hereto as "**Exhibit A**" and incorporated
5 by reference herein.

6 9. The Action relates to a series of loans made by USA and its related parties, Amblamo
7 and Housing Partners. Specifically, USA, Amblamo, and Housing Partners loaned money to the
8 Plaintiffs' former partner and co-plaintiff, American Communities, LLC ("American Communities").

9 10. American Communities' related entities included the now-bankrupt Principle Centered,
10 Inc. ("PCI"). PCI and its subsidiaries, in turn, were created for the sale of single-family homes built by
11 American Communities. Weddell formed PCI with the principals of American Communities, Robert
12 and Cheryl Porter. Spectrum and Weddell worked together in assisting PCI and other American
13 Communities projects to secure financing.

14 11. Plaintiffs, American Communities, PCI, and its subsidiaries brought the Action alleging
15 that USA and the other defendants conspired with one another in devising a scheme that involved a
16 series of fraudulent transactions designed to conspire to bilk Plaintiffs and their former co-plaintiffs
17 out of millions of dollars.

18 12. American Communities, Cheryl Porter, and Robert Porter later settled with the
19 defendants, and, pursuant to the bankruptcy filing by PCI and its subsidiaries, the Bankruptcy Court
20 held an auction for the sale of claims held by those entities. Plaintiffs successfully bid on and were
21 assigned the claims by PCI and its subsidiaries, and has asserted the assigned claims in the Action. *See*
22 Order Approving Sale of Claims to Spectrum Financial Group, dated November 18, 2002, attached as
23 "**Exhibit B.**"

24 13. In 1997, American Communities began obtaining acquisition and development loans
25 through USA, working through USA representatives Hantges, Milanowski, and Kropp. Soon,
26 American Communities began speaking with USA regarding the possibility of raising equity to
27 accommodate its growth needs.

28 14. USA, however, privately wanted American Communities to satisfy its capital needs

1 through USA-brokered loans instead of obtaining equity.

2 15. In order to induce American Communities into taking out more loans from USA, USA,
3 Hantges, Milanowski and Kropp used made a series of false representations to American Communities
4 regarding, among other things, the financial status of a prospective candidate for merger with
5 American Communities. The merger candidate was partially controlled by Hantges and, as USA
6 knew, was not economically suited for a merger with American Communities.

7 16. Eventually, American Communities learned that all representations made by USA,
8 Hantges, Milanowski and Kropp regarding the target company were false, and that the target company
9 was ready to file for bankruptcy protection. As a result, American Communities opted not to go
10 forward with the merger and began to pursue additional equity opportunities with third parties; USA,
11 however, effectively "quashed" these efforts when USA itself promised to become American
12 Communities' equity partner.

13 17. Instead of providing American Communities with equity, it simply created more loans –
14 which American Communities, its affiliates, and subsidiaries could not afford. American
15 Communities' financial position was weakened further as a result of the loans created under false
16 pretenses by USA.

17 18. Hantges and Milanowski took advantage of American Communities' weak financial
18 position by seizing the controls of the company without permission or authority. Hantges and
19 Milanowski, individually and as principals of USA, began committing American Communities to
20 harmful business deals, which further injured American Communities economically.

21 19. After intentionally weakening American Communities with these deals, USA and
22 Hantges informed American Communities that American Communities would have no choice but to
23 deed all of its assets directly to USA.

24 20. In January of 2000, Weddell and Spectrum, along with the Porters, formed PCI to take
25 over and develop most of American Communities' projects and entered into a Debt Restructuring
26 Agreement with USA and Housing Partners relating to various loans. As part of the Debt
27 Restructuring Agreement, USA falsely promised to extend certain American Communities loans and
28 make other accommodations that would permit American Communities to remain solvent.

1 21. Weddell, Spectrum, PCI, and American Communities relied upon the
2 misrepresentations of USA in entering into the Debt Restructuring Agreement, and gave substantial
3 consideration to USA is so doing.

4 22. USA, however, refused to comply with the terms of the Debt Restructuring Agreement,
5 and, once again, improperly claimed that PCI and its guarantors owed additional fees to USA. The
6 actions by USA and its principals caused other potential lenders, contractors, and suppliers to refuse to
7 do business with American Communities or the PCI entities, which ultimately caused those businesses
8 to fail.

9 23. USA also made fraudulent statements and/or actually defrauded Plaintiffs in the ways
10 described in the Fourth Amended Complaint (Exhibit A).

11 24. Weddell and Spectrum, individually and as the assignees of the claims owned by PCI
12 and its subsidiaries, were substantially harmed by USA's fraudulent actions in the ways described
13 herein and in the Fourth Amended Complaint (Exhibit A).

14 **FIRST CLAIM FOR RELIEF FOR NONDISCHARGEABILITY**
15 **(For Obtaining Money through False Representations and Actual Fraud**
16 **Under 11 U.S.C. § 523(a)(2)(B))**

17 25. Plaintiffs incorporate by reference paragraphs 1 through 24, and the allegations of the
18 Fourth Amended Complaint (Exhibit A).

19 265. As set forth herein and in the Fourth Amended Complaint, USA obtained money from
20 Plaintiffs through the Debt Restructuring Agreement by making materially false representations to
21 Plaintiffs. USA knew that its representations were false at the time they were made, and made those
22 representations with the intent to induce reliance by Plaintiffs. USA committed actual fraud when it
23 made its false statements and representations to Plaintiffs.

24 27. USA also obtained money from Plaintiffs' assignors, PCI and its subsidiaries, by
25 making materially false representations in the ways described herein and in Exhibit A. USA knew that
26 its representations were false at the time they were made, and made those representations with the
27 intent to induce reliance by Plaintiffs' assignors. USA committed actual fraud when it made its false
28 statements and representations to Plaintiffs' assignors.

28. Plaintiffs and their assignors actually relied upon the false statements made by USA, which Plaintiffs and its assignors did not know were false. As a result, Plaintiffs and their assignors were actually defrauded by USA in the ways described herein.

29. Plaintiffs and their assignors were damaged thereby.

SECOND CLAIM FOR RELIEF FOR NONDISCHARGEABILITY

(For Fraud in a Fiduciary Capacity, Embezzlement and Larceny Under 11 U.S.C. § 523(a)(4))

30. Plaintiffs incorporate by reference paragraphs 1 through 29, and the allegations of the Fourth Amended Complaint (Exhibit A).

31. As discussed above and in the Fourth Amended Complaint, USA acted in a fiduciary capacity when it induced Plaintiffs, Plaintiffs' assignors, American Communities, and the Porters to enter into the Debt Restructuring Agreement, because USA and its officers had forcibly taken control of certain aspects of the operations of American Communities and its subsidiaries.

32. As such, USA owed to Plaintiffs a fiduciary duty.

33. USA breached its fiduciary duty by wrongfully inducing Plaintiffs, Plaintiffs' assignors, American Communities, and the Porters to enter into the Debt Restructuring Agreement through false representations and actual fraud. Further, USA breached its fiduciary duty by characterizing certain loans as being in default, when they were not in fact in default. USA breached its fiduciary duty by contacting certain third parties and advising them not to deal with American Communities and its subsidiaries.

34. USA also breached its fiduciary duty to Plaintiffs in the ways described in Exhibit A.

35. Plaintiffs have been damaged by USA's actions in the ways described herein and in Exhibit A.

THIRD CLAIM FOR RELIEF FOR NONDISCHARGEABILITY

(For Willful or Malicious Injury Under 11 U.S.C. § 523(a)(6))

36. Plaintiffs incorporate by reference paragraphs 1 through 354, and the allegations of the Fourth Amended Complaint (Exhibit A).

37. By defrauding Plaintiffs and Plaintiffs' assignors in the ways described herein, USA

1 willfully and/or maliciously injured the property of Plaintiffs and their assignors.

2 38. Further, USA injured the property of Plaintiffs and Plaintiffs' assignors in the ways
3 described in Exhibit A.

4 39. USA's actions were willful and malicious and caused injury to Plaintiffs.

5
6 **REQUESTED RELIEF**

7 Based on the foregoing, Plaintiffs respectfully request Judgment providing the following relief:

8 A. An award of damages in favor of Plaintiffs and against USA for the sums due, as
9 determined by this Court or the United States District Court for the District of Nevada, in Case No.
10 CV-S-01-0355, with interest at the Nevada statutory rate until paid in full.

11 B. A declaration that the debt owed to Plaintiffs was incurred as a result of fraud in a
12 fiduciary capacity, embezzlement and larceny and that such debt is not dischargeable pursuant to 11
13 U.S.C. § 523(a)(4).

14 C. A declaration that the debt owed to Plaintiffs was incurred as a result of its having
15 obtained money from Plaintiffs through false representations and actual fraud and that such debt is not
16 dischargeable pursuant to 11 U.S.C. § 523(a)(2)(B).

17 D. An award of costs of suit.

18 E. An award of such other relief as is just and proper.

19
20
21 DATED this 17th day of July, 2006.

22 /s/ Matthew J. Kreutzer

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24 Elissa F. Cadish, Esq.

25 Scott D. Fleming, Esq.

26 Matthew J. Kreutzer, Esq.

27 Hale Lane Peek Dennison and Howard

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Attorneys for Rolland P. Weddell

And Spectrum Financial Group

CERTIFICATE OF MAILING

I certify that on the 17th day of July, 2006, I served a copy of the **COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT** by depositing a copy of the same in a sealed envelope in the United States mail, Reno, Nevada, first-class postage fully prepaid, or by electronic notification and addressed to the persons as follows: See attached list.

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/s/ Cyndy Arnold
Employee of Hale Lane Peek Dennison and Howard

B 104 (Rev. 2/92)		ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS ROLAND WEDDELL AND SPECTRUM FINANCIAL GROUP, LLC		DEFENDANTS USA COMMERCIAL MORTGAGE COMPANY		
ATTORNEYS (Firm Name, Address, and Telephone No.) J. Stephen Peek, Esq. (720)222-2500 Elissa F. Cadish, Esq. Hale Lane Peek Dennison and Howard; 3930		ATTORNEYS (If Known) Howard Hughes Pwy, Fourth Floor, Las Vegas, NV		
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY				
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint to Determine Dischargeability of Debt 11 U.S.C. §§523(a)(2), (a)(4), and (a)(6)				
NATURE OF SUIT (Check the one most appropriate box only.)				
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727 </div> <div style="width: 33%;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan </div> <div style="width: 33%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify) </div> </div>				
ORIGIN OF PROCEEDINGS (Check one box only.)		<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		
DEMAND \$10,000,000		OTHER RELIEF SOUGHT Debt was incurred as a result of fraud		<input checked="" type="checkbox"/> JURY DEMAND Check only if demanded in complaint
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES				
NAME OF DEBTOR U.S.A. Commerical Mortgage Company, et al		BANKRUPTCY CASE NO. BK-S-06-10725 (jointly administered)		
DISTRICT IN WHICH CASE IS PENDING Nevada		DIVISIONAL OFFICE Southern		NAME OF JUDGE Hon. L. Riegler
RELATED ADVERSARY PROCEEDING (IF ANY)				
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE
FILING FEE (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED				
DATE 7/17/06		PRINT NAME Matthew J. Kreutzer, Esq.		SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Matthew J. Kreutzer

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